

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARSEL VAN OOSTEN,

Plaintiff,

- against -

PBH NETWORK INC.

Defendant.

Docket No. 1:17-cv-6627

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Marsel Van Oosten (“Oosten” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant PBH Network Inc. (“PBH” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of penguins, owned and registered by Oosten, a professional photographer. Accordingly, Oosten seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Oosten is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at Pieter de Hoochstraat 19f, ED Amsterdam, 1071, Netherlands.

6. Upon information and belief, PBH is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 231 Front, Street, Suite 300, Brooklyn, New York 11201. Upon information and belief, PBH is registered with the New York Department of State, Division of Corporation to do business in the State of New York. At all times material, hereto, PBH has owned and operated a website at the URL: www.All-That-Is-Interesting.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Oosten photographed penguins (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Oosten is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph has a pending United States Copyright Office application number of and given registration number 1-5981335721.

B. Defendant’s Infringing Activities

11. PBH ran an article on the Website entitled *B25 Fun Penguin Facts*. See <http://all-that-is-interesting.com/25-fun-penguin-facts>. The article prominently featured the Photograph on the Website. A true and correct copy of the screen shot of the Photograph on the article is attached hereto as Exhibit C.

12. PBH did not license the Photograph from Plaintiff for its article, nor did PBH have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST PBH)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. PBH infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. PBH is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by PBH have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant PBH be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
November 14, 2017

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